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9 UNITED STATES DISTRICT COURT
10 NORTHERN DISTRICT OF CALIFORNIA
11 SAN FRANCISCO/OAKLAND DIVISION

12
13 DIAMOND STATE INSURANCE
14 COMPANY, *an Indiana corporation*,

15 Plaintiff,

16 v.

17 MARIN MOUNTAIN BIKES, INC., *a*
18 *California corporation: et al.*,

19 Defendants.

20
21 AND RELATED COUNTERCLAIMS.
22
23
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26
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No. 4:11-CV-05193-CW

STIPULATION AND ORDER TO
CONTINUE TRIAL DATE AND TO
EXTEND PRETRIAL DEADLINES

1
2 WHEREAS, plaintiff/counterdefendant Diamond State Insurance Company commenced
3 this insurance coverage action on October 24, 2011,

4 WHEREAS, during the case management conference on May 2, 2012, the Court set a trial
5 date of January 14, 2013, as well as various pre-trial deadlines.

6 WHEREAS, defendant/counterclaimant Marin Mountain Bikes filed an answer and
7 counterclaims against Diamond State on May 16, 2012,

8 WHEREAS, Diamond State filed a motion to strike Marin's affirmative defenses and to
9 dismiss Marin's original counterclaims (and for a more definite statement) on June 11, 2012,

10 WHEREAS, Marin responded to Diamond State's motion by filing amended
11 counterclaims on July 2, 2012, and requesting leave to file amended affirmative defenses,

12 WHEREAS, Diamond State filed a reply brief supporting its motion to strike the original
13 affirmative defenses, arguing that Marin's proposed amended affirmative defenses are defective
14 and violate FRCP 8(b) and 9(b),

15 WHEREAS, Diamond State filed a motion to dismiss Marin's amended counterclaims on
16 July 25, 2012,

17 WHEREAS, the Court held a hearing on Diamond State's motion to dismiss Marin's
18 amended counterclaims on August 30, 2012,

19 WHEREAS, in an order dated September 10, 2012, the Court granted Marin leave to file
20 its amended affirmative defenses, ordered that Diamond State's reply brief concerning the
21 motion to strike Marin's original affirmative defenses be treated as a motion to strike the
22 amended affirmative defenses, and set further briefing deadlines on the motion (Marin's response
23 brief is due within two weeks of September 10, 2012, and Diamond State's further reply brief is
24 due one week thereafter),

25 WHEREAS, the order dated September 10, 2012, granted Diamond State's motion to
26 dismiss Marin's amended counterclaims for breach of contract, breach of the implied covenant of
27 good faith and fair dealing, and fraud, but also granted Marin leave to amend each of those

counterclaims, including (as to the fraud counterclaim) “leave to amend to assert actionable fraudulent representations about the coverage that would be provided for ATB made outside of the policy language itself.”

WHEREAS, the order dated September 10, 2012, extended the dispositive motion hearing deadline from October 4, 2012, to December 13, 2012, and took off calendar the status conference scheduled for October 4, 2012, but did not continue the trial date itself, discovery cut off, expert disclosure deadline, or other pre-trial deadlines,

WHEREAS, the parties previously obtained a stipulated order to extend the discovery cut off by two weeks (from October 1, 2012, to October 22, 2012), but have made no other prior stipulations or requests to extend the pre-trial deadlines set by the Court on May 2, 2012.

WHEREAS, the parties have not previously stipulated or requested to continue the current trial date of January 14, 2013,

WHEREAS the parties agree that the current trial date, discovery cut off, expert disclosure deadline, and other pre-trial deadlines are no longer workable given that Marin plans to file a further amended counterclaim on or before the deadline of September 17, 2012, and Diamond State’s motion to strike Marin’s amended affirmative defenses is still pending,

Plaintiff/Cross-defendant Diamond State Insurance Company and Defendant/Cross-complainant Marin Mountain Bikes, Inc., hereby stipulate and request that the Court order that the original trial date and original pre-trial deadlines be continued and extended by 120 days as follows:

Completion of Fact Discovery:	Extended from 10/22/12 (per prior 2 week prior stipulated extension) to 1/29/13 (120 days from original deadline of 10/1/12).
Disclosure of Identifies and Reports of Expert Witnesses:	Extended from 10/15/12, to 2/13/12 (120 days from 10/15/12 deadline, plus an extra day due to the last day falling on Lincoln’s birthday).

1	Completion of Expert Discovery	Extended 120 days from 11/15/12, to 3/15/13 .
2	All case-dispositive motions to be heard at 2:00	Extended from 12/13/12 (per 9/10/12 order
3	p.m. on or before:	extending original deadline) to 2/7/13 (120
4		days from original deadline of 10/4/12).
5	Final pre-trial conference:	Continued 120 days from 1/2/13, to 5/8/13 , or
6		as soon thereafter as the Court is available.
7	Jury trial:	Continued 120 days from 1/14/13, to 5/14/13 ,
8		or as soon thereafter as the Court is available.

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10 IT IS SO STIPULATED.

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12 Dated: September __, 2012

NIELSEN HALEY & ABBOTT, LLP

14 By: _____

Jennifer Cohn
Attorneys for Plaintiff/Cross-defendant
Diamond State Insurance Company

17 Dated: September __, 2012

DONAHUE GALLAGHER WOODS LLP

19 By: _____

W. Rock Hill
Attorneys for Defendant/Cross-complainant
Marin Mountain Bikes, Inc.

22 PURSUANT TO THE ABOVE STIPULATION, IT IS SO ORDERED, **except a further**
 23 **case management conference will be held on February 7, 2013; the pretrial conference will**
 24 **be held on Wednesday, May 1, 2013, at 2:00 p.m.; and the jury trial will begin on Monday,**
 25 **May 13, 2013 at 8:30 a.m.**

26 Dated: 9/18/2012

27 
 Hon. Claudia Wilken
 United States District Court Judge